

CHAPTER NO. 569

SENATE BILL NO. 3377

By Crutchfield, Kurita, Graves, Kilby, McLeary, Dixon, Burks, Harper

Substituted for: House Bill No. 3521

By McMillan, Miller, Langster, Mr. Speaker Naifeh

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 3, Part 8, relative to minority owned, woman owned and small businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 3, Part 8, is amended by deleting Sections 12-3-801 through 12-3-808 in their entirety and by substituting instead the following:

Section 12-3-801. This act shall be known and may be cited as the "Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act."

Section 12-3-802. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of general services;

(2) "Department" means the department of general services;

(3) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(A) African American (a person having origins in any of the black racial groups of Africa);

(B) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(C) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(D) Native American (a person having origins in any of the original peoples of North America).

(4) "Minority owned business" means a minority owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(5) "Woman owned business" means a woman owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women;

(6) "Small business" means a business that is independently owned and operated, in accordance with the provisions of this part, and is not dominant in its field of operation;

(7) "Procurement and contracting" means the procurement of equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services; and

(8) "State agency" means any department, office, institution of higher education, board, commission, or any other state agency that receives state funds.

Section 12-3-803. (a) The commissioner is authorized to adopt rules and regulations establishing criteria and standards for minority owned, woman owned and small businesses that are eligible to be included under this part. Such rules and regulations may also include methods by which eligibility can be verified.

(b) Such criteria and standards for eligibility shall include, but not be limited to, the number of employees, the volume of sales, the computed size status with other similar Tennessee businesses, and the total receipts or annual sales of any business or its affiliates and subsidiaries.

(c) The maximum number of employees and the maximum dollar value of a small business under such rules and regulations may vary from industry to industry to the extent necessary to reflect the differing characteristics of any relevant factors of each particular industry.

(d) Any firm desiring to be certified as a minority owned, woman owned or small business shall make application to the Governor's Office of Diversity Business Enterprises on a form prescribed by such office.

(e) The commissioner may adopt any rules and regulations necessary to carry out the provisions of this part.

Section 12-3-804.(a) All state agencies are required to actively solicit bids and proposals for equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services from minority owned, woman owned and small businesses in order to strive to obtain a fair proportion of procurements from minority owned, woman owned and small businesses. The amount of fair proportion shall be recommended annually by the Governor's Office of Diversity Business Enterprises to the board of standards for its review and approval. In annually determining such amount of fair proportion, the board of standards shall establish, based on the recommendation of the Governor's Office of Diversity Business Enterprises a separate amount of fair proportion

for each of the four (4) subcategories of minority businesses set forth within § 12-3-802(3), woman owned businesses and small businesses. Nothing in this part shall be construed as establishing any mandatory goal or quota with respect to minority owned, woman owned or small businesses.

(b) Procurements shall not be deemed to be from either minority owned, woman owned or small businesses if the business with which such contracting is done is owned by or is under the controlling interest of another business which exceeds the limitations of § 12-3-803. No minority owned, woman owned or small business to which a contract has been awarded shall subcontract any portion of such contract with any business which exceeds the limitations of § 12-3-803 and continue to maintain eligibility under this part without express approval of the commissioner.

(c) As used in subsection (a), "actively solicit bids and/or proposals" may include contacting the Governor's Office of Diversity Business Enterprises; reviewing compiled directories of minority owned, woman owned and small businesses; purchasing publication of notices within newspapers of general circulation or through electronic media; and inviting minority owned, woman owned and small businesses to submit bids or to obtain information pertaining to the submission of bids.

Section 12-3-805. The Departments of General Services, Finance and Administration, Transportation and Economic and Community Development, and the State Building Commission shall cooperate with the Governor's Office of Diversity Business Enterprises in the design and implementation of procedures for the identification of minority owned, woman owned and small businesses, the selection for bid and proposal lists and the monitoring of procurements from minority owned, woman owned and small businesses.

Section 12-3-806. (a) The commissioner has the power, subject to regulation of the board of standards, to authorize any or all state departments, institutions, or agencies to purchase all or any specific types and classes of commodities or services, without following the procedures relating to the requisitioning of such commodities through the department.

(b) It is intended that delegation of purchase authority may be made by agency, by type of commodity or service, by dollar amount of purchase, or by any combination thereof, in order to reduce the purchase time required and to increase the amount of purchases made from minority owned, woman owned and small businesses.

Section 12-3-807. (a) The commissioner, as director of the Governor's Office of Diversity Business Enterprises, shall appoint a diversity business program director to work in conjunction with the Departments of General Service, Finance and Administration, Transportation, Economic and Community Development and the State Building Commission to:

(1) Compile and maintain a comprehensive list of minority owned, woman owned and small businesses by cooperating with both governmental and private sector entities in locating potential sources for various products and services;

(2) Assist minority owned, woman owned and small businesses in complying with state procurement and contracting procedures and requirements;

(3) Examine requests from state agencies for the purchase of materials, supplies, equipment or services to help determine which invitations to bid and requests for proposals may offer increased opportunities for minority owned, woman owned and small businesses; and

(4) Make recommendations to appropriate state agencies for the simplification of procurement and contract specifications and terms in order to increase the opportunities of participation by minority owned, woman owned and small businesses.

(b) All state agencies shall fully cooperate with the Governor's Office of Diversity Business Enterprises and shall provide staff support and any other assistance upon request of the commissioner. This cooperation specifically includes, but is not limited to, establishing and striving to achieve annual departmental or agency level internal goals for minority owned, woman owned and small business contracting. In establishing and striving to achieve these annual goals, each agency shall work closely with the Governor's Office of Diversity Business Enterprises. Each agency shall provide as requested to the Governor's Office of Diversity Business Enterprises periodic reports on upcoming procurement and contract opportunities and on the level of participation by minority owned, woman owned and small businesses in that agency's procurements and contracts.

Section 12-3-808. (a) The commissioner shall annually report, on or before each December 31, to the governor and to each member of the general assembly concerning the awarding of purchases to minority owned, woman owned and small businesses and the total value of awards made during the preceding fiscal year under the provisions of this part. The commissioner shall also include in such annual report the number, by category, of minority owned, woman owned and small businesses solicited; the number of bids received, by category, from minority owned, woman owned and small businesses; and the dollar amount of purchases awarded, by category, to minority owned, woman owned and small businesses.


(b) In annually reporting the information on minority owned, woman owned and small businesses, based upon information provided by vendors, the commissioner shall, in a separate section of the report, indicate the number of businesses solicited within each of the four (4) subcategories enumerated within § 12-3-802(3), the number of bids received from each of the four (4) subcategories enumerated within § 12-3-802(3), and the total number and dollar amount of all purchases awarded within each of the four (4) subcategories enumerated within § 12-3-802(3). For purposes of evaluation, the report shall also indicate the total number and dollar amount of all purchases by all state agencies during the reporting period.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 12, 2004



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 27th day of April 2004



PHIL BREDEBEN, GOVERNOR